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OMNOVA SOLUTIONS  
175 GHENT ROAD  
FAIRLAWN OH 44333-3300

In re Application :  
Sizer, et al. :  
Application No. 10/565,402 : DECISION ON APPLICATION  
Filed: September 11, 2006 : FOR PATENT TERM ADJUSTMENT  
Atty Docket No. 010335USJZFOMNZ :  
200052US01 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B)" filed May 10, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days one thousand five hundred fifty-three (1053) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand fifty-three (1053) days**.

On February 24, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On May 10, 2011, Applicants timely<sup>1</sup> submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one thousand fifty-three (1053) days.

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<sup>1</sup> Applicants filed the application for patent term adjustment prior to the payment of the issue fee.

Applicants assert entitlement to a patent term adjustment of one thousand fifty-three (1053) days on the basis that the PTO should have been assessed delay of one thousand fifty-five (1055) days for not mailing an Office action within fourteen months of September 11, 2006, the date of completion of all 35 USC 371 requirements.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

35 USC 371 requirements were completed on September 11, 2006. Pursuant to 37 C.F.R. § 1.702(a)(1), the Office had until November 11, 2006 to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. The Office mailed an Office action on October 1, 2010. Accordingly, under 37 C.F.R. § 1.703(a)(1), PTO delay of one thousand fifty-five (1055) days should have been assessed.

However, a review of the file reveals that Applicant delay also should have been assessed pursuant to 37 CFR 1.704(b). Subsequent to the Office mailing an Office action on October 1, 2010, Applicants filed a reply on January 1, 2011. Accordingly, pursuant to 37 CFR 1.704(b), two (2) days of Applicant delay should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one thousand fifty-three (1053) days** (1055 days of PTO delay reduced by 2 days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571)272-3207.



Cliff Congo  
Petitions Attorney  
Office of Petitions